

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on March 27, 2001 at 7:00 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 503, 3/23/2001; SB 502,
3/23/2001; SB 509, 3/23/2001;
SB 512, 3/23/2001; SB 515,
3/23/2001
Executive Action: SB 506; SB 508; SB 510

EXECUTIVE ACTION ON SB 506

Motion: SENATOR MIKE TAYLOR moved AMENDMENT SB050601.ALH,
EXHIBIT (ens69a01) .

Discussion:

SENATOR MIKE HALLIGAN asked what was different about the civil penalties section of the bill. **Todd Everts** noted that the bill sponsor was funneling money into the revolving loan account for alternative energy, as opposed to the general fund. Those provisions were left out of the original bill.

Vote: Motion carried 10-0. **SENATOR STEVE DOHERTY** was excused.

Motion/Vote: **SENATOR ALVIN ELLIS** moved **AMENDMENT SB050601.ATE, EXHIBIT(ens69a02)**. Motion carried unanimously.

Motion: **SENATOR BEA MCCARTHY** moved that **SB 506 DO PASS AS AMENDED**.

Discussion:

SENATOR JOHN COBB noted that the penalties go into the revolving loan account run by the Department of Environmental Quality (DEQ). The DEQ can contract out or give low interest loans to people who want to build alternative energy systems. **SENATOR ROYAL JOHNSON** was curious as to how groups could get loans from the DEQ. **SENATOR COBB** replied that people either apply to the DEQ or the DEQ could let someone else run the program.

SENATOR HALLIGAN thought there were existing programs to loan money for renewable projects. **SENATOR COBB** was unsure of how small business loans worked for the situation.

SENATOR MCCARTHY thought the purposes of the loans were for small businesses and private homeowners, rather than large cooperatives. **SENATOR COBB** stated that was correct. There are three parts to the bill, including the revolving loan account, raising credits, and alternative energy.

SENATOR ELLIS questioned whether cooperatives were included in the current bill. **SENATOR COBB** responded that the cooperatives didn't want net metering so he took them out of the bill.

SENATOR HALLIGAN referred to a handout on coal severance tax distribution, **EXHIBIT(ens69a03)**, and asked about the renewable resource debt service fund. **Jim Mockler, Montana Coal Council**, understood that the fund was to provide low interest loans to wind and solar renewable energy accounts. **Mr. Everts** had thought that the debt service account was for the Department of Natural Resources and Conservation's (DNRC) renewable resource programs, which has bonding capability. **SENATOR HALLIGAN** wished to get a

representative from the DEQ or DNRC to explain the program so there wouldn't be a duplication. **SENATOR TAYLOR** agreed and wanted clarification.

SENATOR MCCARTHY withdrew her previous motion.

EXECUTIVE ACTION ON SB 508

Motion: **SENATOR MACK COLE** moved **AMENDMENT SB050801.ATE, EXHIBIT (ens69a04)**.

Discussion:

SENATOR ROYAL JOHNSON questioned how 12% was decided on for the reasonable rate of return. **Mr. Everts** declared that was what the sponsor and the cooperatives had come up with. **SENATOR JOHNSON** inquired how the cooperatives had come up with 12% and the rate of return for them. **Doug Hardy, Montana Electric Cooperatives Assn.**, explained that they were on a margin base return. They put the 12% in so that the legislation wouldn't be painted strictly as a cooperative bill. Their understanding, industry-wise, was that generation rates of return ranged from 10-18%.

SENATOR TAYLOR inquired whether anyone had looked at the generating cost of a plant versus the output of hours, plus a reasonable rate of return. **Mr. Hardy** exhorted that a cost based rate would do exactly that.

SENATOR ELLIS purported that there had been a bill in the Taxation Committee talking about cost based power. He noted that some companies were selling marginal excesses and subsidizing the power controlled by the Public Service Commission (PSC) or other agencies. **Mr. Everts** affirmed that this was really a policy call saying that the rate wouldn't exceed 12%. **SENATOR ELLIS** wanted to ensure that it was clear that all the power generated divided by the total operation costs was what was being talked about, not any subsidies due to sale of power not needed. He was concerned with how the PSC would look at the cost based power. **Mr. Everts** declared that if a cooperative was building the facility, the PSC wouldn't have any authority.

SENATOR WALT MCNUTT was under the impression that the PSC used a targeted 12% return under a regulated situation. **Mr. Everts** thought the PSC had a just and reasonable standard between 10-12%.

SENATOR STEVE DOHERTY wondered why "the failure of reasonably maintained" was being stricken and only inserting "failure" following "equipment." **Mr. Everts** believed "reasonably maintained" was in the eye of the beholder and that the amendment made that clearer. **Mr. Hardy** stated that the language previously explained was covered in a different way. The "reasonably maintained" portion raised a large flag to some generating groups. They had too much to lose not to have well maintained equipment and they were fearful of litigation.

SENATOR TAYLOR felt that "social instabilities" should also be stricken. **Mr. Everts** explained that when that section was drafted, there is language in other statutes like that which allow for opting out of contracts.

Substitute Motion: **SENATOR TAYLOR** made a substitute motion **TO STRIKE "OTHER SOCIAL INSTABILITIES" ON PAGE 2, LINE 2.**

SENATOR MCNUTT was unsure whether that should be stricken. **Mr. Everts** professed that "other social instabilities" could include terrorism.

SENATOR ELLIS asked if "social instabilities" was defined anywhere. **Mr. Everts** said no. **SENATOR DOHERTY** felt that it was not unusual language.

SENATOR TAYLOR withdrew his substitute motion.

Vote: Motion **carried unanimously.**

{Tape : 1; Side : B}

Motion: **SENATOR DOHERTY** moved **TO CHANGE 100 MEGAWATTS TO 25 MEGAWATTS.**

Discussion:

SENATOR COREY STAPLETON was curious what a 25 megawatt facility would be like. **SENATOR DOHERTY** thought that a facility in Great Falls serving Malmstrom Air Force Base (MAFB) was a 25 megawatt facility, or close to that. At one point, it used coal, but now uses natural gas.

SENATOR TAYLOR wished for another example of a 25 megawatt facility. **Mr. Hardy** claimed that a 25 megawatt plant could produce enough electricity to run about 25,000 non-electric homes.

SENATOR HALLIGAN pressed for the size of the diesel engines Smurfit-Stone Container (SSC) was potentially going to use. **Mr. Hardy** believed they were close to one megawatt.

SENATOR MCCARTHY questioned whether the facility at MAFB was being used on a regular basis or emergency basis only. **SENATOR DOHERTY** thought it was being used on a regular basis.

SENATOR TOM ZOOK inquired if there were economies of scale in the plants in relation to the power. **SENATOR DOHERTY** stated there were. He was unsure what the breakeven would be.

SENATOR STAPLETON wondered why **SENATOR DOHERTY** had chosen 25 instead of 20 megawatts.

Substitute Motion/Vote: **SENATOR DOHERTY** made a substitute motion **TO CHANGE 100 MEGAWATTS TO 20 MEGAWATTS**. Substitute motion carried unanimously.

Motion: **SENATOR COLE** moved that **SB 508 DO PASS AS AMENDED**.

Discussion:

SENATOR STAPLETON wondered if "not" at the end of line 23 should be stricken. **Mr. Everts** stated that the bill allows an entity to offer a contract up to 75%. The language on lines 23-24 basically says to the extent that it is not contracted for, power can be marketed out of state. On page 1, lines 25-26, the entity is required to offer up the surplus capacity annually on a declining contract term basis. **SENATOR STAPLETON** felt like the surplus would be the remaining 25%, instead of the 75%. **Mr. Everts** explained that the surplus capacity definition applied to the entire section. **SENATOR STAPLETON** implored what would happen if there were multiple facilities throughout the state or region and thought that the output of all the facilities should reach the 75%, instead of each individual facility. **Mr. Everts** cited that the bill applied to a single facility.

SENATOR JOHNSON understood that the contract allowed a 10-year moratorium on taxes for a facility. **Mr. Hardy** exclaimed that local communities have the impact fee up front, plus an annual fee to help operational costs. The tax break would begin at the time ground would be broken. People would sign a contract committing to purchase the outflow of the cost base for a 20-year period. The contracting period is designed to match the financing period.

SENATOR HALLIGAN didn't think the 20-year financing period seemed to be applicable in every case since the megawatts had been lowered to 20.

Vote: Motion **carried 9-2 with Halligan and Johnson voting no.**

EXECUTIVE ACTION ON SB 506

SENATOR COBB noted that the DNRC renewable resources were the water projects.

Motion/Vote: **SENATOR MCCARTHY** moved that **SB 506 DO PASS AS AMENDED**. Motion **carried unanimously**.

EXECUTIVE ACTION ON SB 510

Motion: **SENATOR STAPLETON** moved **AMENDMENT SB051001.ATE, EXHIBIT (ens69a05) .**

Discussion:

SENATOR ELLIS professed that it had been the policy of the legislature for the past eight years to move away from statutory appropriations. It might be better to put the money into the SEA account in HB 41, which still has to be appropriated.

SENATOR DOHERTY didn't think they could say where the money was going to go, other than to the school trust fund. In article 10, section 2, all other grants of land or money from the United States for general education purposes or without special purpose go into the public school fund. This advance is without a special purpose. **SENATOR ELLIS** said that SB 495 buys the revenue stream from the school trust fund.

{Tape : 2; Side : A}

SENATOR TAYLOR thought that the amendment should perhaps be dropped so that some details could be ironed out before moving on to the Senate floor.

SENATOR DOHERTY felt that the amendments were absolutely necessary, although he opposed the bill.

Vote: Motion **carried 10-1 with Taylor voting no.**

Motion: **SENATOR STAPLETON** moved that **SB 510 DO PASS AS AMENDED**.

Discussion:

SENATOR DOHERTY pointed out that section 1 had been talked about for a long time. The general appropriations contains the option for Montana to receive \$10 million simply by asking for it. He felt it was a speculative gamble to take the Otter Creek tracts rather than \$10 million.

Vote: Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

HEARING ON SB 503

Sponsor: SENATOR KEN TOOLE, SD 27, Helena

Proponents: Hal Harper, Self
Polly Bailey, Self
Bob Romney, Self
Bob Raney, Self
George Ochenski, Self
Don Judge, AFL-CIO
Paul Edwards, Self

Opponents: Ken Morrison, PPL

Opening Statement by Sponsor:

SENATOR KEN TOOLE, SD 27, Helena, stated that this bill essentially is to put a referendum on the ballot in November to purchase the hydro system in Montana. He submitted two different purchasing scenarios, **EXHIBIT (ens69a06)**.

Proponents' Testimony:

Hal Harper, Self, pointed out the amount of land associated with the sales and various projects.

Polly Bailey, Self, voiced her support of buying back dams in Montana. She submitted the results of an opinion poll from the Helena Independent Record, **EXHIBIT (ens69a07)**.

Bob Romney, Self, was concerned with rising power costs.

Bob Raney, Self, thought that deregulation in the energy market was a colossal failure. Citizens of the state need the opportunity to decide whether they should have control over their

necessities of life, as well as the benefits of controlling water and regulation.

George Ochenski, Self, submitted an article he wrote and a letter from the DNRC regarding water rights of deregulated hydro power utilities, **EXHIBIT(ens69a08)**, **EXHIBIT(ens69a09)**.

Don Judge, AFL-CIO, believed that taking back the control of the dams would provide an opportunity for Montanans to access lower power rates. They also support increased generation in the state.

Paul Edwards, Self, admitted that water is a key product from Montana and that it is being used for electrical generation essentially free to companies, with much of the benefit being exported.

Opponents' Testimony:

Ken Morrison, PPL, submitted written testimony, **EXHIBIT(ens69a10)**.

Informational Testimony:

Clyde Dailey, AARP, supported the referendum process. However, there were things in the legislation that needed to be evaluated.

{Tape : 2; Side : B}

Questions from Committee Members and Responses:

SENATOR JOHNSON asked what the load was that Montana Power Company (MPC) uses for the 285,000 customers at a peak period. **Pat Corcoran, MPC**, asserted that if they included all of their customers, the average load might be range of 1000 to 1300 megawatts. Their residential and small to medium sized commercial customers would use an average of 800 to 1000 megawatts. **SENATOR JOHNSON** wished to know how much energy the hydro facilities generate. **Mr. Corcoran** couldn't remember the exact number, but noted that it was roughly a third of their total load.

SENATOR TAYLOR questioned **Polly Bailey** if her rates had increased and by how much. **Ms. Bailey** stated they had, but wasn't sure how much they had increased.

SENATOR TAYLOR referred to a dam owned by the Salish-Kootenai tribe that is under contract for 17 or 18 years. He wondered how

the contract would be honored if the dam was purchased. **Mr. Ochenski** was unsure. **SENATOR TAYLOR** noted that the government requires 50% of the water coming out of the dams to help the salmon run. **Mr. Ochenski** replied that the water is used for flushing flow to help the fry through the massive reservoirs that are backed up by the Columbia mainstem, which is a federal plan to help recover an endangered species. There is little Montana can do to fight against the federal government in that regard.

SENATOR TAYLOR wondered how the sponsor would replace the local property taxes if the bill proceeded. **SENATOR TOOLE** would like to see some decrease on the property tax payment.

SENATOR ZOOK inquired whether **Ms. Bailey's** rates had really increased and if she was a customer of MPC. **Ms. Bailey** stated that was correct. **SENATOR ZOOK** noted that the rates have been frozen until July 1, 2002. He thought that perhaps her total bill had increased due to natural gas costs. He mentioned that 65% of the power in the northwest comes from hydroelectric power. Currently, only half of that is being obtained because of the water shortage due to several years of drought. **Ms. Bailey** exhorted that part of the reason for drought has come from excess carbon dioxide in the atmosphere from global warming due to the burning of fossil fuels.

SENATOR STAPLETON pressed for how the referendum process tied into the bill. **SENATOR TOOLE** exclaimed that the legislation calls for a referendum. **SENATOR STAPLETON** wished for the sponsor to speak on the thought of sending the legislation to citizens as a referendum who probably would not spend much time evaluating the issue. **SENATOR TOOLE** didn't feel that the legislature had done a good job with managing energy policies. He professed that dams have always kept rates down because there are no fuel costs, they are in Montana, and serve as the core of the system.

SENATOR DON RYAN questioned how long it would be before Montana took control of the dams if the referendum passed in November 2002. **Ken Morrison** didn't have any idea. **SENATOR TOOLE** was unsure as well.

SENATOR ZOOK assumed that the costs in his scenario were to service the bonds that it would take to purchase the facilities. **SENATOR TOOLE** said that it would be at 5% for 30 years. **SENATOR ZOOK** was curious as to whether the costs included the loss of taxes and if the employees became state employees. **SENATOR TOOLE** noted the operations and maintenance costs. He reminded the committee of the power going out of the dams and revenue coming

in. He hoped the dams could be run in a manner that would cover all of their costs.

SENATOR COLE asked what the sponsor was trying to do with regard to eminent domain and condemnation that was in the law. **SENATOR TOOLE** commented that it was in the bill. His opinion was that there had to be a negotiation process between the state and the owners of the hydro system. The further it gets from the original purchase date of the dams, the more nebulous arguments become about the value of the dams.

Closing by Sponsor:

SENATOR TOOLE assumed that whether the state or a private entity owned the dams, they had to comply with the Federal Energy Regulatory Commission (FERC) licensing requirements and other agencies with regard to the salmon. The dams do provide a significant portion of the load in Montana. The idea behind the legislation isn't to meet all of the load in the state, but it makes up for a very large portion. He didn't believe supply to be the problem for the energy crisis. He thought it was because we don't dedicate all of the power generated within the state to Montana's needs.

HEARING ON SB 502

Sponsor: **SENATOR KEN TOOLE, SD 27, Helena**

Proponents: Don Judge, AFL-CIO
 Hal Harper, Self
 Bob Raney, Self
 Alec Hansen, League of Cities

Opponents: John Alke, Montana Dakota Utilities
 Pat Corcoran, PPL

Opening Statement by Sponsor:

SENATOR KEN TOOLE, SD 27, Helena, submitted a summary of the legislation, **EXHIBIT**(ens69a11).

Proponents' Testimony:

{Tape : 3; Side : A}

Don Judge, AFL-CIO, noted that this legislation would work well with the previous bill, SB 503. It provides the authority that

we would be responsible for the purchase, operation, and contracting of the dams.

Hal Harper, Self, referenced 1997 when SB 390 set deregulation into motion. He urged a favorable recommendation from the committee.

Bob Raney, Self, referred to a newspaper article regarding coal bed methane in Wyoming, wherein the federal government via the Bureau of Land Management (BLM), decided to rush several leases through on certain lands. He felt the most important thing to do for the economy was to get a grip on the cost of energy in the state. Under the power authority, there are five million acres of state owned land in Montana, almost all of which are school trust lands.

Alec Hansen, League of Cities, mentioned that last summer a group of cities and businesses put a plan together in an attempt to acquire the transmission and distribution systems of MPC. Had that purchase gone through as planned, those assets would have been turned over to a public power authority. Public ownership of generation, transmission, and distribution systems has worked fairly well in other states and is something to consider.

Opponents' Testimony:

John Alke, Montana Dakota Utilities (MDU), felt there were two provisions in the bill that were adverse to them and wished for amendments. As written, the power authority could condemn MDU's generation to provide power to western Montana. Condemnation of public utility assets is doomed to failure. He asked the committee to delete section 8 or amend it so that it specifies that the state power authority could not condemn a vertically integrated utility whose rates are regulated by the PSC. Secondly, he wished for an amendment to exempt MDU from the WET tax. Cooperatives are already exempt and MDU only paid \$81,000 in WET tax last year, so there would not be a significant impact on the treasury.

Pat Corcoran, PPL, was in opposition to the legislation.

Questions from Committee Members and Responses:

SENATOR ZOOK wished for the sponsor to elaborate on a previous statement regarding large customers having little difficulty getting power at reasonable rates within the next few years.

SENATOR TOOLE believed that a number of different issues were coming into the mix in the California market. Hopefully, that will lead to more stable rates, instead of such large

fluctuations. **SENATOR ZOOK** asked if more stable rates would come in part due to more water in dams. **SENATOR TOOLE** felt that would be part of the scenario, as well as the supply to the California market. **SENATOR ZOOK** wondered if it was fair to say that it could come about because generation plants are being built in other places. **SENATOR TOOLE** thought that the California crisis would be alleviated by construction of new plants.

SENATOR JOHNSON wondered about the amount of time **Alec Hansen** spent on a committee trying to buy MPC's poles and wires earlier last year. **Mr. Hansen** replied that the committee began in May, worked all through the summer, and finally notified that they were not the successful bidder near the end of August. They met at least two to three times per month. **SENATOR JOHNSON** asked how he would feel about the power authority only meeting a few times a year. **Mr. Hansen** said that if a power authority was established and began to seriously look at the acquisition of dams, they would obviously have to meet more than a few times a year. **SENATOR JOHNSON** inquired whether the extended contract that is permitted for three years was considered. **Mr. Hansen** cited that had they been successful in their bid, they would have asked the legislature to establish a public power authority to manage their assets. They fully expected that the rates for distribution and transmission would be regulated. **SENATOR JOHNSON** wanted to know how they would have handled the extended contract. **Mr. Hansen** couldn't recall whether they had specifically addressed that issue.

SENATOR DOHERTY inquired about the guarantee that the public power authority wouldn't make incredibly obtuse decisions. **SENATOR TOOLE** thought that there were tremendous risks in the business. That is why the bill is about supplying a relatively small load. The larger the load one tries to service, the bigger the risk and the higher the cost. The entity is focused on small customers which makes the overall load smaller and less prone to dips in prices.

SENATOR ELLIS implored whether the sponsor visited the trading floor of MPC. **SENATOR TOOLE** was familiar with trading floors, but did not visit MPC's. **SENATOR ELLIS** sought to know if the sponsor envisioned the power authority taking care of things such as peak loads, or contracting that out so that someone else was on the trading floor all the time. **SENATOR TOOLE** had envisioned the default supplier doing that. The default supplier would be responsible for making sure that the peaks and valleys in load requirements were filled and that the capacity is available to do so. The power authority would be working at the wholesale level and would have the ability to operate conservation programs.

SENATOR ELLIS questioned if the sponsor anticipated the wholesale supplier having enough energy to meet the peak demand and marketing the remainder or something else. **SENATOR TOOLE** thought the default supplier did that all the time. The power authority would be looking for chunks of energy they could offer to the default supplier. The power authority would be a full scale acquisition entity that would look at purchasing, building, load management, renewable energy development, and making the power available to small customers in Montana through the distribution or default supplier.

Closing by Sponsor:

SENATOR TOOLE urged the committee to debate the school state lands issue. Many resources are available under school lands that could be used to meet the demand in Montana. He also touched on the subject of condemnation.

{Tape : 3; Side : B}

HEARING ON SB 509

Sponsor: **SENATOR STEVE DOHERTY, SD 24, Great Falls**

Proponents: **Jack Clarkson, Self**
Sheila Rice, Energy West

Opponents: **None**

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD 24, Great Falls, stated that the bill deals with tax incentives for the use of alternative fuels in vehicles. It also promotes the use of alternative fuel vehicles. The alternative fuels that the legislation applies to are propane, natural gas, E85, hydrogen, and electricity. The bill provides tax credits for the construction of both small and larger scale alternative fuel infrastructure and the purchase of alternative fuel vehicles.

Proponents' Testimony:

Jack Clarkson, Greater Yellowstone-Teton Clean Cities Coalition, declared that the legislation would provide incentives for alternative fuel use. The community of West Yellowstone will need to put in some infrastructure to service the multitude of visitors that travel through each year. They need incentives in the form of tax free easements to provide those facilities. This provision also addresses the implementation of stationary

platforms, such as hydrogen power generation, should electric prices get so high that it becomes a more feasible approach for power.

Sheila Rice, Energy West, relayed a personal story about driving a natural gas vehicle, as well as a vision for the 2002 Olympics in Salt Lake City.

Opponents' Testimony: None

Informational Testimony:

Mike Allen, Ethanol Producers and Consumers, thought it was important to have alternative fuels at work in Montana. He didn't think ethanol and E85 were spelled out clear enough in the bill. He was also concerned with the mass transit and off-road issues, as well as the financial impact the bill might have.

Questions from Committee Members and Responses:

SENATOR MCCARTHY asked if there was a similar bill in the 1993 session and wanted to know what happened to it. **Sheila Rice** purported that there was current language in the law that deals with conversions of existing vehicles to natural gas.

SENATOR ZOOK referred to a situation in Arizona and wondered if there would be a substantial impact on Montana if everyone was eligible for the program. **Ms. Rice** said that Arizona had a 50% tax credit. This bill would provide a 25% tax credit.

SENATOR STAPLETON addressed the sponsor's disfavor of giving tax breaks to big businesses. **SENATOR DOHERTY** told the committee that targeted tax breaks directed to something that can be measured and yield an end result is good. **SENATOR STAPLETON** was also curious about what the fiscal impact would be. **SENATOR DOHERTY** didn't know and was waiting for the fiscal note.

Closing by Sponsor:

SENATOR DOHERTY elaborated that the bill was an effort to promote the use of alternative fuels. As a result, there may be long term savings, cleaner communities, and new industries leading to better jobs.

HEARING ON SB 512

Sponsor: SENATOR MIKE HALLIGAN, SD 34, Missoula

Proponents: Don Quander, Montana Large Customer Group
Tom Daubert, Ash Grove Cement Company
Ralph Denoski, Holnam Inc.
Greg Groepper, Energy Share

Opponents: Debbie Smith, Natural Resources Defense Council
Ken Morrison, PPL

Opening Statement by Sponsor:

{Tape : 4; Side : A}

SENATOR MIKE HALLIGAN, SD 34, Missoula, discussed some of the proposed amendments. This bill represents a temporary measure to get citizens through the volatile times that will begin July 1, 2002. The legislation is to provide utility price stability over the next several years to residential, small business and large industrial customers. Hopefully, it will protect from economic upheaval with respect to job losses by stabilizing prices and perhaps, will reduce or eliminate the risk of job loss with respect to the excise tax. It is a graduated excise tax on all power generated in Montana for sale either in or out of the state. There is no tax on sales of electricity less than \$40 per megawatt, which is twice the regulated price. The key to the bill is that it allows a fair rate of return and also allows the market to work. There are exemptions in order not to discourage new generation. The distribution mechanism is also an important part of the bill.

Proponents' Testimony:

Don Quander, Montana Large Customer Group, thought the bill was a very useful and critical bi-partisan effort to provide a backup to the current energy situation. The cost of generating electricity in Montana has not significantly increased in the last year. Rather, the price being demanded from those attempting to purchase power in the market multiplied more than ten times over. This measure doesn't take any gain or profit above a specified level, but is a graduated tax. It does not kick in until \$40, which the PSC suggested is a reasonable target range over the next several years. There is no tax on the sales currently being made by PPL under the by-back contract. The tax only comes into being when prices exceed \$40 per megawatt hour. This is intended specifically not to discourage new generation and that is why there are exemptions for new generation, cooperatives, federal facilities, and facilities under 60 megawatts.

Tom Daubert, Ash Grove Cement Company, supported the legislation.

Ralph Denoski, Holnam Inc., thought the bill would provide a tool to make it through the short term energy problem. He told the committee that companies were asking people to buy cheap electricity in Texas. There are some scenarios where residential consumers pay for 11 months of electricity and they get one month free. Deregulation does work and can be a means to be very competitive in business.

Greg Groepper, Energy Share, noted that there is a tremendous impact on low income consumers when rates go up. He voiced his support of the bill.

Opponents' Testimony:

Debbie Smith, Natural Resources Defense Council, had no objection to the excise tax or the windfall profits type tax that the bill proposed. She also supported the funding of the Low Income Energy Assistance Programs (LIEAP) that the bill provided. However, she felt the best way to manage the energy crisis was to give consumers accurate price signals for the true cost of energy. To improve the bill, she proposed to change the division from 80% to price stability and 20% to the other programs to a 50-50 split. Also, on line 22 add funding for all qualified Universal Systems Benefits Charge (USBC) programs. Finally, she didn't think Montana should use its extremely limited money for low interest loans for the construction of new temporary or permanent generation facilities.

Ken Morrison, PPL, submitted written testimony, **EXHIBIT (ens69a12)**.

Questions from Committee Members and Responses:

SENATOR STAPLETON thought the intention was that the tax was paid by the seller of the wholesale energy. **SENATOR HALLIGAN** exclaimed that there is an excise tax on the sale of the electricity so anyone generating in Montana would be required to pay the tax. There is no reference to a buyer in the bill. **Don Quander** believed the tax was imposed on the sale as such. There was nothing that would prohibit the seller from including that in a price, if they could competitively do so. **SENATOR STAPLETON** didn't understand why they would want to be able to allow a wholesaler to pass the cost on to the buyer. **Mr. Quander** replied that the bill, as written, didn't do what was suggested, but it may be an appropriate revision to clarify that it was expected to be absorbed by the seller.

SENATOR RYAN wanted to know if Montanans would receive the same low cost cement if there was a better market elsewhere. **Ralph**

Denoski said that historically his company had opportunities to sell their product out of state for excessive profits. However, they chose to stay with their customers here and sell the excess to the other market.

Closing by Sponsor:

SENATOR HALLIGAN didn't agree with the 50-50 split with respect to the revenue, but wanted to ensure that there would be enough money to buy down the rates. He wasn't opposed to looking at the USBC change proposed by **Ms. Smith** to allow for the energy efficiencies to be used as part of the dispensable amounts.

HEARING ON SB 515

Sponsor: SENATOR MIKE TAYLOR, SD 37, Proctor

Proponents: Alec Hansen, League of Cities

Opponents: Senator Ken Toole, SD 27

Debbie Smith, Natural Resources Defense Council

Opening Statement by Sponsor:

SENATOR MIKE TAYLOR, SD 37, Proctor, noted that a state power authority would empower Montana's government to work with private enterprise in order to meet citizen's and businesses needs for a continuous source of low cost energy. Goals of the power authority would be to supply low cost, reliable power, support power production, improve water quality, protect health and the environment, support multiple recreation uses, support economic growth, protect natural resources, and build partnerships with private enterprises for public interest. He submitted a summary of the bill, **EXHIBIT(ens69a13)**.

Proponents' Testimony:

{Tape : 4; Side : B}

Alec Hansen, League of Cities, thought the bill had some very important elements as it sets up a board appointed by the Governor. The board would have the ability to issue revenue bonds, as well as own and operate generation utility systems. The bill does not include condemnation or eminent domain. It is based on the idea that sometime there might be a transaction between a buyer, which would be the public power authority, and a willing seller. If it ever came to that point, there should be authority in law to accomplish that transaction.

Opponents' Testimony:

Senator Ken Toole, SD 27, submitted a comparison between his bill, SB 502, and SB 515, **EXHIBIT (ens69a14)**.

Debbie Smith, Natural Resources Defense Council, supported publicly owned power systems with accountability to the people they represent, as well as proper environmental stewardship obligations and consumer protection concerns. However, the bill is one of mammoth consequences. She didn't believe that the state should try to take over the management of rural cooperatives or investor owned utilities. In addition, she didn't feel that the state should be in the business of building new generation. The long term risks of such a massive investment should be left with private industry, not with the tax payers.

Questions from Committee Members and Responses:

SENATOR RYAN wished for an explanation of the difference between general obligation bonds and generation bonds. **SENATOR JOHNSON** proclaimed that a general obligation bond is one that is issued where there is full faith and credit against the area. A revenue bond would be issued and the payoff would be based on whatever source the revenue was supposed to come from. It would only be the responsibility of that particular situation to pay the revenue bond off, unless some other caveat existed.

SENATOR RYAN asked if there was any risk to revenue bond obligations. **SENATOR TAYLOR** responded that there is always risk involved.

SENATOR ZOOK wondered why the sponsor had put "Montana consumers are entitled to cost based prices" in the bill. **SENATOR TAYLOR** didn't want to set the profit rates in the bill and wanted to see new energy plants built in Montana. He referenced the Tennessee Valley Power Authority.

SENATOR JOHNSON questioned whether the sponsor was present during a discussion about the makeup of the authority board. **SENATOR TAYLOR** said he was absent. **SENATOR JOHNSON** implored whether the authority would have a lot of broad powers to issue as many as 850 million bonds, which is roughly four times the limit the public purpose bonds can be issued. **SENATOR TAYLOR** replied yes. **SENATOR JOHNSON** wished for the sponsor to address section 5. **SENATOR TAYLOR** elaborated that the board could meet much more frequently than a few times a year, depending on certain circumstances. **SENATOR JOHNSON** professed that a public power authority needed to be more than a group of citizens who could meet when convenient for them. He wanted to know how this group

would be coordinated with the Transition Advisory Council (TAC) or the PSC. **SENATOR TAYLOR** wasn't sure how that would be done.

Closing by Sponsor:

SENATOR TAYLOR discussed an amendment dealing with editorial oversight and the use of bond proceeds. He felt that one of the keys to economic development in the future would be stable energy prices at a reasonable cost. Government working with private enterprise could solve current problems. He believed the bill could create higher wages and a greater tax base.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens69aad)